

104TH CONGRESS  
1ST SESSION

# H. R. 10

To reform the Federal civil justice system; to reform product liability law.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. HYDE, Mr. RAMSTAD, Mrs. CHENOWETH, and Mr. CONDIT (for themselves, Mr. ARMEY, Mr. ALLARD, Mr. BACHUS, Mr. BAKER of California, Mr. BAKER of Louisiana, Mr. BALLENGER, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BILIRAKIS, Mr. BLILEY, Mr. BLUTE, Mr. BONO, Mr. BUNNING of Kentucky, Mr. BURR, Mr. BURTON of Indiana, Mr. CALLAHAN, Mr. CALVERT, Mr. CAMP, Mr. CANADY, Mr. CHRISTENSEN, Mr. CHRYSLER, Mr. CLINGER, Mr. COBURN, Mr. COOLEY, Mr. COX, Mr. CRANE, Mrs. CUBIN, Mr. CUNNINGHAM, Mr. DAVIS, Mr. DOOLITTLE, Mr. DORNAN, Ms. DUNN, Mr. EMERSON, Mr. ENSIGN, Mr. EVERETT, Mr. EWING, Mr. FOLEY, Mr. FORBES, Mrs. FOWLER, Mr. FOX, Mr. FRISA, Mr. GANSKE, Mr. GILCHREST, Mr. GILMAN, Mr. GOODLATTE, Mr. GOODLING, Mr. GUNDERSON, Mr. HANCOCK, Mr. HASTERT, Mr. HASTINGS of Washington, Mr. HAYWORTH, Mr. HEINEMAN, Mr. HERGER, Mr. HILLEARY, Mr. HOBSON, Mr. HOSTETTLER, Mr. HOUGHTON, Mr. INGLIS of South Carolina, Mrs. JOHNSON of Connecticut, Mr. JONES, Mr. KIM, Mr. KNOLLENBERG, Mr. LAHOOD, Mr. LARGENT, Mr. LATOURETTE, Mr. LEWIS of Kentucky, Mr. LIGHTFOOT, Mr. LINDER, Mr. MCCOLLUM, Mr. MCHUGH, Mr. MCINTOSH, Mr. MICA, Mr. MILLER of Florida, Ms. MOLLINARI, Mrs. MYRICK, Mr. NUSSLE, Mr. PACKARD, Mr. PORTER, Mr. PORTMAN, Mr. RADANOVICH, Mr. RIGGS, Mr. ROHRABACHER, Mr. ROTH, Mr. ROYCE, Mr. SANFORD, Mr. SCHAEFER, Mr. SENSENBRENNER, Mr. SHADEGG, Mr. SHAW, Mr. SHAYS of Connecticut, Mr. SMITH of Texas, Mr. SMITH of New Jersey, Mr. SMITH of Michigan, Mr. SOLOMON, Mr. STEARNS, Mr. STOCKMAN, Mr. STUMP, Mr. TALENT, Mr. TATE, Mr. TAYLOR of North Carolina, Mr. TEJEDA, Mr. THORNBERRY, Mr. TIAHRT, Mr. UPTON, Mrs. WALDHOLTZ, Mr. WAMP, Mr. WELDON of Florida, Mr. ZIMMER, Mr. CRAPO, Mr. KOLBE, Mr. PAXON, Mr. YOUNG of Florida, Mr. COMBEST, Mr. EHRLICH, and Mrs. MEYERS of Kansas) introduced the following bill; which was referred as follows:

Title I, referred to the Committee on the Judiciary, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

Title II, referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JANUARY 19, 1995

Additional sponsors: Mr. SCHIFF, Mr. MOORHEAD, Mr. CREMEANS, Mr. NORWOOD, Mr. BONILLA, Mr. HUNTER, Mrs. VUCANOVICH, Mr. WALKER, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. SEASTRAND, and Mr. COLLINS of Georgia

FEBRUARY 10, 1995

Additional sponsors: Mr. LONGLEY, Mr. ROBERTS, Mr. POMBO, Mr. SALMON, and Mr. GALLEGLY

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## A BILL

To reform the Federal civil justice system; to reform product liability law.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Common Sense Legal  
 5       Reforms Act of 1995”.

6                       **TITLE I—CIVIL JUSTICE**  
 7                       **REFORM**

8       **SEC. 101. AWARD OF ATTORNEY’S FEE TO PREVAILING**  
 9                       **PARTY IN FEDERAL CIVIL DIVERSITY LITIGA-**  
 10                      **TION.**

11       (a) AWARD OF ATTORNEY’S FEE.—Section 1332 of  
 12       title 28, United States Code, is amended by adding at the  
 13       end the following:

1       “(e)(1) The district court that exercises jurisdiction  
2 in a civil action commenced under this section shall award  
3 to the party that prevails with respect to a claim in such  
4 action an attorney’s fee determined in accordance with  
5 paragraph (2).

6       “(2) An attorney’s fee awarded under paragraph (1)  
7 shall be a reasonable attorney’s fee attributable to such  
8 claim, except that the fee awarded under such paragraph  
9 may not exceed—

10           “(A) the actual cost incurred by the  
11 nonprevailing party for an attorney’s fee payable to  
12 an attorney for services in connection with such  
13 claim; or

14           “(B) if no such cost was incurred by the  
15 nonprevailing party due to a contingency fee agree-  
16 ment, a reasonable cost that would have been in-  
17 curred by the nonprevailing party for an attorney’s  
18 noncontingent fee payable to an attorney for services  
19 in connection with such claim.

20       “(3) Notwithstanding paragraphs (1) and (2), the  
21 court in its discretion may refuse to award, or may reduce  
22 the amount awarded as, an attorney’s fee under paragraph  
23 (1) to the extent that the court finds special circumstances  
24 that make an award of an attorney’s fee determined in  
25 accordance with such subparagraph unjust.”.

1 **SEC. 102. HONESTY IN EVIDENCE.**

2 (a) OPINION TESTIMONY BY EXPERTS.—Rule 702 of  
3 the Federal Rules of Evidence is amended—

4 (1) by inserting “(a) **In general.**” before  
5 “If”, and

6 (2) by adding at the end the following:

7 “(b) **Adequate basis for opinion.** Testimony in  
8 the form of an opinion by a witness that is based on sci-  
9 entific knowledge shall be inadmissible in evidence unless  
10 the court determines that such opinion is—

11 “(1) based on scientifically valid reasoning; and

12 “(2) sufficiently reliable so that the probative  
13 value of such evidence outweighs the dangers speci-  
14 fied in rule 403.

15 “(c) **Disqualification.** Testimony by a witness  
16 who is qualified as described in subsection (a) is inadmis-  
17 sible in evidence if such witness is entitled to receive any  
18 compensation contingent on the legal disposition of any  
19 claim with respect to which such testimony is offered.”.

20 **SEC. 103. PRODUCT LIABILITY REFORM.**

21 (a) APPLICABILITY AND PREEMPTION.—This section  
22 governs any product liability action brought in any State  
23 or Federal Court against any manufacturer or seller of  
24 a product on any theory for harm caused by the product.  
25 This section supersedes State law only to the extent that  
26 State law applies to an issue covered by this section. Any

1 issue that is not covered by this section shall be governed  
2 by otherwise applicable State or Federal law.

3 (b) LIABILITY RULES APPLICABLE TO PRODUCT  
4 SELLERS.—

5 (1) GENERAL RULE.—Except as provided in  
6 paragraph 2, in a product liability action, a product  
7 seller shall be liable to a claimant for harm only if  
8 the claimant establishes that—

9 (A)(i) the product which allegedly caused  
10 the harm complained of was sold by the product  
11 seller,

12 (ii) the product seller failed to exercise rea-  
13 sonable care with respect to the product, and

14 (iii) such failure to exercise reasonable care  
15 was a proximate cause of the claimant's harm,

16 (B)(i) the product seller made an express  
17 warranty applicable to the product which alleg-  
18 edly caused the harm complained of, independ-  
19 ent of any express warranty made by the manu-  
20 facturer as to the same product,

21 (ii) the product failed to conform to the  
22 warranty, and

23 (iii) the failure of the product to conform  
24 to the warranty caused the claimant's harm, or

1 (C) the product seller engaged in inten-  
2 tional wrongdoing as determined under applica-  
3 ble State law and such intentional wrongdoing  
4 was a proximate cause of the harm complained  
5 of by the claimant.

6 For purposes of subparagraph (A)(ii), a product sell-  
7 er shall not be considered to have failed to exercise  
8 reasonable care with respect to a product based  
9 upon an alleged failure to inspect a product where  
10 there was no reasonable opportunity to inspect the  
11 product in a manner which would, in the exercise of  
12 reasonable care, have revealed the aspect of the  
13 product which allegedly caused the claimant's harm.

14 (2) SPECIAL RULE.—In a product liability ac-  
15 tion, a product seller shall be liable for harm to the  
16 claimant caused by such product as if the product  
17 seller were the manufacturer of such product if—

18 (A) the manufacturer is not subject to  
19 service of process under the laws of the State  
20 in which the claimant brings the action, or

21 (B) the court determines that the claimant  
22 would be unable to enforce a judgment against  
23 the manufacturer.

24 (c) LIMITATIONS ON PUNITIVE DAMAGES.—

1           (1) GENERAL LIMITATION.—Punitive damages  
2           may, to the extent permitted by applicable State law,  
3           be awarded against a manufacturer or product seller  
4           in a product liability action if the claimant estab-  
5           lishes by clear and convincing evidence that the  
6           harm suffered was the result of conduct manifesting  
7           actual malice.

8           (2) LIMITATION ON AMOUNT.—The amount of  
9           punitive damages that may be awarded for a claim  
10          in any civil action subject to this section shall not  
11          exceed 3 times the amount awarded to the claimant  
12          for the economic injury on which such claim is  
13          based, or \$250,000, whichever is greater.

14          (d) SEVERAL LIABILITY FOR NONECONOMIC DAM-  
15          AGES.—In any product liability action, the liability of each  
16          manufacturer or seller of the product involved in such ac-  
17          tion shall be several only and shall not be joint for non-  
18          economic damages. Such manufacturer or seller shall be  
19          liable only for the amount of noneconomic damages allo-  
20          cated to such manufacturer or seller in direct proportion  
21          to such manufacturer's or such seller's percentage of re-  
22          sponsibility as determined by the trier of fact.

23          (e) DEFINITIONS.—For purposes of this section—

24                  (1) the term “claimant” means any person who  
25                  brings a product liability action and any person on

1       whose behalf such an action is brought, including  
2       such person's decedent if such an action is brought  
3       through or on behalf of an estate or such person's  
4       legal representative if it is brought through or on be-  
5       half of a minor or incompetent,

6               (2) the term "malice" means conduct that is  
7       either—

8               (A) specifically intended to cause serious  
9       personal injury, or

10              (B) carried out with both a flagrant indif-  
11       ference to the rights of the claimant and an  
12       awareness that such conduct is likely to result  
13       in serious personal injury,

14              (3) with respect to a product, the term "manu-  
15       facturer" means—

16              (A) any person who is engaged in a busi-  
17       ness to produce, create, make, or construct the  
18       product and who designs or formulates the  
19       product or has engaged another person to de-  
20       sign or formulate the product,

21              (B) a product seller of the product who,  
22       before placing the product in the stream of  
23       commerce—

24                      (i) designs or formulates or has en-  
25       gaged another person to design or formu-



late an aspect of the product after the product was initially made by another, and

(ii) produces, creates, makes, or constructs such aspect of the product, or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product,

(4) the term “product”—

(A) means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(i) which is capable of delivery itself, in a mixed or combined state, or as a component part or ingredient,

(ii) which is produced for introduction into trade or commerce,

(iii) which has intrinsic economic value, and

(iv) which is intended for sale or lease to persons for commercial or personal use, and

(B) does not include—

(i) human tissue, human organs, human blood, and human blood products, or

1 (ii) electricity, water delivered by a  
2 utility, natural gas, or steam,

3 (5) the term “product seller”—

4 (A) means a person—

5 (i) who sells, distributes, leases, pre-  
6 pares, blends, packages, or labels a product  
7 or is otherwise involved in placing a prod-  
8 uct in the stream of commerce, or

9 (ii) who installs, repairs, or maintains  
10 the harm-causing aspect of a product, and

11 (B) does not include—

12 (i) a manufacturer,

13 (ii) a seller or lessor of real property,

14 (iii) a provider of professional services  
15 in any case in which the sale or use of a  
16 product is incidental to the transaction and  
17 the essence of the transaction is the fur-  
18 nishing of judgment, skill, or services,

19 (iv) any person who acts only in a fi-  
20 nancial capacity with respect to the sale of  
21 a product, or

22 (v) any person who leases a product  
23 under a lease arrangement in which the se-  
24 lection, possession, maintenance, and oper-

1           ation of the product are controlled by a  
2           person other than the lessor,

3           (6) the term ‘punitive damages’ means damages  
4           in addition to compensation for actual injury suf-  
5           fered, for purposes of imposing punishment for con-  
6           duct engaged in with malice and to deter similar fu-  
7           ture conduct, but such term does not include com-  
8           pensation for actual injury, and

9           (7) the term “State” means any State of the  
10          United States, the District of Columbia, the Com-  
11          monwealth of Puerto Rico, the Virgin Islands,  
12          Guam, American Samoa, the Northern Mariana Is-  
13          lands, the Trust Territory of the Pacific Islands, and  
14          any other territory or possession of the United  
15          States, or any political subdivision thereof.

16 **SEC. 104. ATTORNEY ACCOUNTABILITY.**

17          (a) TRUTH IN ATTORNEYS’ FEES.—It is the sense  
18          of the Congress that each State should require, under pen-  
19          alty of law, each attorney admitted to practice law in such  
20          State to disclose in writing, to any client with whom such  
21          attorney has entered into a contingency fee agreement—

22                (1) the actual services performed for such client  
23                in connection with such agreement, and

1           (2) the precise number of hours actually ex-  
2           pended by such attorney in the performance of such  
3           services.

4           (b) AMENDMENT TO THE FEDERAL RULES OF CIVIL  
5           PROCEDURE.—Rule 11(c) of the Federal Rules of Civil  
6           Procedure (28 U.S.C. App.) is amended—

7           (1) in the matter preceding subdivision (1) by  
8           striking “may” and inserting “shall”;

9           (2) in the penultimate sentence of subdivision  
10          (1)(A) by striking “may” and inserting “shall”; and

11          (3) in subdivision (2)—

12                 (A) by amending the first sentence to read  
13                 as follows: “A sanction imposed for a violation  
14                 of this rule shall be sufficient to deter repetition  
15                 of such conduct or comparable conduct by oth-  
16                 ers similarly situated, and to compensate the  
17                 parties that were injured by such conduct.”;  
18                 and

19                 (B) in the second sentence by striking “,  
20                 if imposed on motion and warranted for effec-  
21                 tive deterrence,”.

22   **SEC. 105. NOTICE REQUIRED BEFORE COMMENCEMENT OF**  
23                 **CIVIL ACTION.**

24           Chapter 99 of title 28, United States Code is amend-  
25   ed by adding at the end the following:

1   **§ 1632. Notice required before commencement of civil**  
2                                   **action**

3           “(a) DISMISSAL OF CIVIL ACTION.—Except as pro-  
4   vided in subsection (c), the district court in which a civil  
5   action is commenced shall dismiss such action with respect  
6   to a defendant, without prejudice, if—

7                   “(1) not later than 60 days after such action is  
8           commenced, the defendant files a motion to dismiss  
9           such action on the basis that the plaintiff failed to  
10          comply with the requirement specified in subsection  
11          (b); and

12                   “(2) the plaintiff fails to establish that before  
13          commencing such action the plaintiff complied with  
14          such requirement.

15          “(b) REQUIREMENT.—Not less than 30 days before  
16   commencing a civil action in a district court of the United  
17   States, the plaintiff shall transmit (by 1st class mail, post-  
18   age prepaid, or contract for delivery by any company that  
19   in its regular course of business physically delivers cor-  
20   respondence as a commercial service to the public) to the  
21   defendant (at an address reasonably calculated to provide  
22   actual notice to such defendant) a written statement speci-  
23   fying the particular claims alleged in such action and the  
24   amount of damages claimed in such action.

25          “(c) EXCEPTIONS.—Subsection (a) shall not apply  
26   with respect to any civil action—

1           “(1) to seize or forfeit assets subject to forfeit-  
2       ure;

3           “(2) commenced under title 11 of the United  
4       States Code;

5           “(3) commenced to establish a receivership or  
6       conservatorship;

7           “(4) based on the insolvency of the defendant,  
8       or the need to liquidate assets of the defendant to  
9       satisfy any requirement under Federal law;

10          “(5) if assets that are subject to such action or  
11       that would satisfy a judgment in such action are  
12       likely to be removed, dissipated, or destroyed by the  
13       defendant;

14          “(6) if the defendant is likely to flee;

15          “(7) if prior written notice of the filing of such  
16       action is required by any other law;

17          “(8) to enforce a civil investigative demand or  
18       an administrative summons;

19          “(9) if such action is—

20               “(A) to foreclose a lien;

21               “(B) to obtain a temporary restraining  
22       order or preliminary injunction; or

23               “(C) to prevent the fraudulent conveyance  
24       of property; or

1           “(10) if such action involves exigent cir-  
2           cumstances that compel immediate resort to the  
3           court.

4           “(d) STATUTE OF LIMITATIONS.—

5           “(1) SUSPENSION BEFORE COMMENCEMENT OF  
6           ACTION.—If the statute of limitations applicable to  
7           a claim would expire in the 30-day period beginning  
8           on the date the plaintiff transmits the notice re-  
9           quired by subsection (b), such statute shall be sus-  
10          pended—

11                   “(A) during such 30-day period; or

12                   “(B) during the 90-day period beginning  
13           on the date the plaintiff so transmits such no-  
14           tice if, in such 30-day period, the parties to  
15           such action so agree in writing.

16           “(2) FILING CIVIL ACTION AFTER DISMIS-  
17          SAL.—If—

18                   “(A) a civil action is timely commenced in  
19           a district court with respect to a claim;

20                   “(B) such action is dismissed under sub-  
21           section (a); and

22                   “(C) the statute of limitations applicable to  
23           such claim expires before the expiration of the  
24           60-day period beginning on the date such action  
25           is dismissed;

1 then the plaintiff in such action may commence a  
2 civil action based on such claim in such 60-day pe-  
3 riod notwithstanding such statute.”.

4 (b) CONFORMING AMENDMENT.—Chapter 99 of title  
5 28, United States Code, is amended in the table of sec-  
6 tions by adding at the end the following:

“1632. Notice required before commencement of civil action.”.

7 **SEC. 106. HOUSE COMMITTEE REPORTS.**

8 Clause 2(l) of rule XI of the Rules of the House of  
9 Representatives is amended by adding at the end the fol-  
10 lowing new subparagraph:

11 “(8) Each report of a committee on each bill or joint  
12 resolution of a public character reported by that commit-  
13 tee shall include the following information regarding that  
14 bill or joint resolution:

15 “(A) Whether that bill or joint resolution pre-  
16 empts the law of any State.

17 “(B) The retroactive applicability, if any, of  
18 that bill or joint resolution.

19 “(C) Whether that bill or joint resolution cre-  
20 ates any private cause of action and, if so, a descrip-  
21 tion of that relief and the terms and conditions for  
22 awarding attorneys fees, if any.

23 “(D) The applicability, if any, of that bill or  
24 joint resolution to the Federal Government or any of  
25 its agencies or instrumentalities.”.



1 **SEC. 107. AMENDMENT TO RACKETEER INFLUENCED AND**  
2 **CORRUPT ORGANIZATIONS ACT.**

3 Section 1964(c) of title 18, United States Code, is  
4 amended by inserting “, except that no person may bring  
5 an action under this provision if the racketeering activity,  
6 as defined in section 1961(1)(D), involves conduct action-  
7 able as fraud in the purchase or sale of securities” before  
8 the period.

9 **SEC. 108. EFFECTIVE DATE; APPLICATION OF AMEND-**  
10 **MENTS.**

11 (a) EFFECTIVE DATE.—Except as provided in sub-  
12 sections (b) and (c), this title and the amendments made  
13 by this title shall take effect on the first day of the first  
14 month beginning more than 180 days after the date of  
15 the enactment of this Act.

16 (b) PRODUCT LIABILITY.—Section 103 shall apply  
17 only with respect to claims arising after the effective date  
18 of this title.

19 (c) APPLICATION OF AMENDMENTS.—

20 (1) The amendments made by sections 101 and  
21 105 shall apply only with respect to civil actions  
22 commenced after the effective date of this title.

23 (2) The amendments made by section 102 shall  
24 apply only with respect to cases in which a trial has  
25 commenced after the effective date of this title.

1           (3) The amendment made by section 106 shall  
 2       apply to bills and joint resolutions reported by any  
 3       committee at least 30 calendar days after the date  
 4       of enactment of this Act.

## 5       **TITLE II—REFORM OF PRIVATE** 6       **SECURITIES LITIGATION**

### 7       **SEC. 201. SHORT TITLE; TABLE OF CONTENTS.**

8           (a) SHORT TITLE.—This Act may be cited as the  
 9       “Securities Litigation Reform Act”.

10          (b) TABLE OF CONTENTS.—The table of contents for  
 11       this Act is as follows:

Sec. 201. Short title; table of contents.

Sec. 202. Prevention of lawyer-driven litigation.

          (a) Plaintiff steering committees to ensure client control of law-  
               suits.

          (b) Full disclosure of proposed class action settlements.

Sec. 203. Prevention of abusive practices that foment litigation.

Sec. 204. Prevention of “fishing expedition” lawsuits.

Sec. 205. Establishment of “safe harbor” for predictive statements.

Sec. 206. Alternative dispute resolution procedure.

Sec. 207. Rule of construction.

Sec. 208. Effective date.

### 12       **SEC. 202. PREVENTION OF LAWYER-DRIVEN LITIGATION.**

13           (a) PLAINTIFF STEERING COMMITTEES TO ENSURE  
 14       CLIENT CONTROL OF LAWSUITS.—The Securities Ex-  
 15       change Act of 1934 (15 U.S.C. 78a et seq.) is amended  
 16       by adding at the end the following new section:

#### 17       **“SEC. 36. GUARDIAN AD LITEM AND CLASS ACTION STEER-** 18       **ING COMMITTEES.**

19           “(a) GUARDIAN AD LITEM.—Except as provided in  
 20       subsection (b), not later than 10 days after certifying a

1 plaintiff class in any private action brought under this  
2 title, the court shall appoint a guardian ad litem for the  
3 plaintiff class from a list or lists provided by the parties  
4 or their counsel. The guardian ad litem shall direct counsel  
5 for the class as set forth in this section and perform such  
6 other functions as the court may specify. The court shall  
7 apportion the reasonable fees and expenses of the guard-  
8 ian ad litem among the parties. Court appointment of a  
9 guardian ad litem shall not be subject to interlocutory re-  
10 view.

11 “(b) CLASS ACTION STEERING COMMITTEE.—Sub-  
12 section (a) shall not apply if, not later than 10 days after  
13 certifying a plaintiff class, on its own motion or on motion  
14 of a member of the class, the court appoints a committee  
15 of class members to direct counsel for the class (hereafter  
16 in this section referred to as the ‘plaintiff steering commit-  
17 tee’) and to perform such other functions as the court may  
18 specify. Court appointment of a plaintiff steering commit-  
19 tee shall not be subject to interlocutory review.

20 “(c) MEMBERSHIP OF PLAINTIFF STEERING COM-  
21 MITTEE.—

22 “(1) QUALIFICATIONS.—

23 “(A) NUMBER.—A plaintiff steering com-  
24 mittee shall consist of not fewer than 5 class

1 members, willing to serve, who the court be-  
2 lieves will fairly represent the class.

3 “(B) OWNERSHIP INTERESTS.—Members  
4 of the plaintiff steering committee shall have  
5 cumulatively held during the class period not  
6 less than—

7 “(i) the lesser of 5 percent of the se-  
8 curities which are the subject matter of the  
9 litigation or securities which are the sub-  
10 ject matter of the litigation with a market  
11 value of \$10,000,000; or

12 “(ii) such smaller percentage or dollar  
13 amount as the court finds appropriate  
14 under the circumstances.

15 “(2) NAMED PLAINTIFFS.—Class members who  
16 are named plaintiffs in the litigation may serve on  
17 the plaintiff steering committee, but shall not com-  
18 prise a majority of the committee.

19 “(3) NONCOMPENSATION OF MEMBERS.—Mem-  
20 bers of the plaintiff steering committee shall serve  
21 without compensation, except that any member may  
22 apply to the court for reimbursement of reasonable  
23 out-of-pocket expenses from any common fund es-  
24 tablished for the class.

1           “(4) MEETINGS.—The plaintiff steering com-  
2       mittee shall conduct its business at one or more pre-  
3       viously scheduled meetings of the committee, of  
4       which prior notice shall have been given and at  
5       which a majority of its members are present in per-  
6       son or by electronic communication. The plaintiff  
7       steering committee shall decide all matters within its  
8       authority by a majority vote of all members, except  
9       that the committee may determine that decisions  
10      other than to accept or reject a settlement offer or  
11      to employ or dismiss counsel for the class may be  
12      delegated to one or more members of the committee,  
13      or may be voted upon by committee members seria-  
14      tim, without a meeting.

15           “(5) RIGHT OF NONMEMBERS TO BE HEARD.—  
16      A class member who is not a member of the plaintiff  
17      steering committee may appear and be heard by the  
18      court on any issue in the action, to the same extent  
19      as any other party.

20           “(d) FUNCTIONS OF GUARDIAN AD LITEM AND  
21      PLAINTIFF STEERING COMMITTEE.—

22           “(1) DIRECT COUNSEL.—The authority of the  
23      guardian ad litem or the plaintiff steering committee  
24      to direct counsel for the class shall include all pow-  
25      ers normally permitted to an attorney’s client in liti-

1 gation, including the authority to retain or dismiss  
2 counsel and to reject offers of settlement, and the  
3 preliminary authority to accept an offer of settle-  
4 ment, subject to the restrictions specified in para-  
5 graph (2). Dismissal of counsel other than for cause  
6 shall not limit the ability of counsel to enforce any  
7 contractual fee agreement or to apply to the court  
8 for a fee award from any common fund established  
9 for the class.

10 “(2) SETTLEMENT OFFERS.—If a guardian ad  
11 litem or a plaintiff steering committee gives prelimi-  
12 nary approval to an offer of settlement, the guardian  
13 ad litem or the plaintiff steering committee may seek  
14 approval of the offer by a majority of class members  
15 if the committee determines that the benefit of seek-  
16 ing such approval outweighs the cost of soliciting the  
17 approval of class members.

18 “(e) IMMUNITY FROM CIVIL LIABILITY; REMOVAL.—  
19 Any person serving as a guardian ad litem or as a member  
20 of a plaintiff steering committee shall be immune from any  
21 civil liability arising from such service. The court may re-  
22 move a guardian ad litem or a member of a plaintiff steer-  
23 ing committee for good cause shown.

24 “(f) EFFECT ON OTHER LAW.—This section does not  
25 affect any other provision of law concerning class actions

1 or the authority of the court to give final approval to any  
2 offer of settlement.”.

3 (b) FULL DISCLOSURE OF PROPOSED CLASS ACTION  
4 SETTLEMENTS.—Section 21 of the Securities Exchange  
5 Act of 1934 (15 U.S.C. 78u) is amended by adding at  
6 the end the following new subsection:

7 “(i) DISCLOSURE OF SETTLEMENT TERMS TO CLASS  
8 MEMBERS.—In any private action under this title that is  
9 certified as a class action pursuant to the Federal Rules  
10 of Civil Procedure, a proposed settlement agreement that  
11 is published or otherwise disseminated to the class shall  
12 include the following statements:

13 “(1) STATEMENT OF POTENTIAL OUTCOME OF  
14 CASE.—

15 “(A) AGREEMENT ON AMOUNT OF DAM-  
16 AGES AND LIKELIHOOD OF PREVAILING.—If the  
17 settling parties agree on the amount of dam-  
18 ages per share that would be recoverable if the  
19 plaintiff prevailed on each claim alleged under  
20 this title and the likelihood that the plaintiff  
21 would prevail—

22 “(i) a statement concerning the  
23 amount of such potential damages; and

24 “(ii) a statement concerning the prob-  
25 ability that the plaintiff would prevail on

1           the claims alleged under this title and a  
2           brief explanation of the reasons for that  
3           conclusion.

4           “(B) DISAGREEMENT ON AMOUNT OF  
5           DAMAGES OR LIKELIHOOD OF PREVAILING.—If  
6           the parties do not agree on the amount of dam-  
7           ages per share that would be recoverable if the  
8           plaintiff prevailed on each claim alleged under  
9           this title or on the likelihood that the plaintiff  
10          would prevail on those claims, or both, a state-  
11          ment from each settling party concerning the  
12          issue or issues on which the parties disagree.

13          “(C) INADMISSIBILITY FOR CERTAIN PUR-  
14          POSES.—Statements made in accordance with  
15          subparagraphs (A) and (B) shall not be admis-  
16          sible for purposes of any Federal or State judi-  
17          cial or administrative proceeding.

18          “(2) STATEMENT OF ATTORNEYS’ FEES OR  
19          COSTS SOUGHT.—If any of the settling parties or  
20          their counsel intend to apply to the court for an  
21          award of attorneys’ fees or costs from any fund es-  
22          tablished as part of the settlement, a statement indi-  
23          cating which parties or counsel intend to make such  
24          an application, the amount of fees and costs that  
25          will be sought (including the amount of such fees



1 and costs determined on a per-share basis, together  
2 with the amount of the settlement proposed to be  
3 distributed to the parties to suit, determined on a  
4 per-share basis), and a brief explanation of the basis  
5 for the application. Such information shall be clearly  
6 summarized on the cover page of any notice to a  
7 party of a proposed or final settlement.

8 “(3) IDENTIFICATION OF LAWYERS’ REP-  
9 RESENTATIVES.—The name and address of one or  
10 more representatives of counsel for the plaintiff class  
11 who will be reasonably available to answer written  
12 questions from class members concerning any matter  
13 contained in any notice of settlement published or  
14 otherwise disseminated to class members.

15 “(4) OTHER INFORMATION.—Such other infor-  
16 mation as may be required by the court, or by any  
17 guardian ad litem or plaintiff steering committee ap-  
18 pointed by the court pursuant to this section.”.

19 (c) PROHIBITION ON ATTORNEYS’ FEES PAID FROM  
20 COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of  
21 the Securities Exchange Act of 1934 (15 U.S.C. 78u(d))  
22 is amended by adding at the end the following new para-  
23 graph:

24 “(4) PROHIBITION ON ATTORNEYS’ FEES PAID  
25 FROM COMMISSION DISGORGEMENT FUNDS.—Except

1 as otherwise ordered by the court, funds disgorged  
2 as the result of an action brought by the Commis-  
3 sion in Federal court, or of any Commission admin-  
4 istrative action, shall not be distributed as payment  
5 for attorneys' fees or expenses incurred by private  
6 parties seeking distribution of the disgorged funds.''.  
7

8 **SEC. 203. PREVENTION OF ABUSIVE PRACTICES THAT FO-**  
9 **MENT LITIGATION.**

10 (a) ADDITIONAL PROVISIONS APPLICABLE TO CLASS  
11 ACTIONS.—Section 21 of the Securities Exchange Act of  
12 1934 (15 U.S.C. 78u) is further amended by adding at  
13 the end the following new subsections:

14 “(j) ELIMINATION OF BONUS PAYMENTS TO NAMED  
15 PLAINTIFFS IN CLASS ACTIONS.—In any private action  
16 under this title that is certified as a class action pursuant  
17 to the Federal Rules of Civil Procedure, the portion of  
18 any final judgment or of any settlement that is awarded  
19 to class plaintiffs serving as the representative parties  
20 shall be equal, on a per share basis, to the portion of the  
21 final judgment or settlement awarded to all other members  
22 of the class. Nothing in this subsection shall be construed  
23 to limit the award to any representative parties of actual  
24 expenses (including lost wages) relating to the representa-  
tion of the class.

1       “(k) REQUIREMENT THAT NAMED PLAINTIFF HAVE  
2 MEANINGFUL INVESTMENT.—In any private action under  
3 this title, in order for a plaintiff or plaintiffs to obtain  
4 certification as representatives of a class of investors pur-  
5 suant to the Federal Rules of Civil Procedure, the plaintiff  
6 or plaintiffs must show that they owned, in the aggregate,  
7 at the beginning of the time period in which violations of  
8 this title are alleged to have occurred, not less than the  
9 lesser of—

10           “(1) 1 percent of the class of securities which  
11       are the subject of the litigation; or

12           “(2) \$10,000 (in market value) of such securi-  
13       ties.

14       “(l) RESTRICTIONS ON PROFESSIONAL PLAIN-  
15 TIFFS.—A person may be a named plaintiff, or officer, di-  
16 rector, fiduciary, or beneficiary of a named plaintiff, in  
17 no more than 5 class actions filed during any 3-year  
18 period.

19       “(m) LOSER’S LIABILITY FOR ATTORNEYS’ FEES  
20 AND COSTS OF SUIT.—

21           “(1) PAYMENT BY LOSING PARTY.—If the court  
22       in any private action under this title enters a final  
23       judgment against a party litigant on any basis other  
24       than settlement, the court shall, upon motion by the  
25       prevailing party, order the losing party to pay the

1 prevailing party reasonable attorneys' fees and other  
2 expenses incurred by the prevailing party.

3 “(2) TIME FOR APPLICATION.—A party seeking  
4 an award of fees and other expenses shall, within 30  
5 days of a final, nonappealable judgment in the ac-  
6 tion, submit to the court an application for fees and  
7 other expenses.

8 “(3) COURT DISCRETION.—The court, in its  
9 discretion, may reduce the amount to be awarded  
10 pursuant to this section, or deny an award, to the  
11 extent that the prevailing party during the course of  
12 the proceedings engaged in conduct that unduly and  
13 unreasonably protracted the final resolution of the  
14 matter in controversy.

15 “(n) PREVENTION OF ABUSIVE CONFLICTS OF IN-  
16 TEREST.—In any private action under this title that is cer-  
17 tified as a class action pursuant to the Federal Rules of  
18 Civil Procedure, if a party is represented by an attorney  
19 who directly owns or otherwise has a beneficial interest  
20 in the securities that are the subject of the litigation, the  
21 court shall make a determination of whether such interest  
22 constitutes a conflict of interest sufficient to disqualify the  
23 attorney from representing the party.

24 “(o) ENCOURAGEMENT OF FINALITY IN SETTLE-  
25 MENT DISCHARGES.—

1           “(1) DISCHARGE.—A defendant who settles any  
2       private action brought under this title at any time  
3       before verdict or judgment shall be discharged from  
4       all claims for contribution brought by other persons.  
5       Upon entry of the settlement by the court, the court  
6       shall enter a bar order constituting the final dis-  
7       charge of all obligations to the plaintiff of the set-  
8       tling defendant arising out of the action. The order  
9       shall bar all future claims for contribution or indem-  
10      nity arising out of the action—

11               “(A) by nonsettling persons against the  
12               settling defendant; and

13               “(B) by the settling defendant against any  
14               nonsettling defendants.

15           “(2) REDUCTION.—If a person enters into a  
16       settlement with the plaintiff prior to verdict or judg-  
17       ment, the verdict or judgment shall be reduced by  
18       the amount paid to the plaintiff by that person.

19       “(p) CONTRIBUTION FROM NON-PARTIES IN INTER-  
20       ESTS OF FAIRNESS.—

21           “(1) RIGHT OF CONTRIBUTION.—A person who  
22       becomes liable for damages in any private action  
23       under this title may recover contribution from any  
24       other person who, if joined in the original suit,  
25       would have been liable for the same damages.

1           “(2) STATUTE OF LIMITATIONS FOR CONTRIBU-  
2       TION.—Once judgment has been entered in any pri-  
3       vate action under this title determining liability, an  
4       action for contribution must be brought not later  
5       than 6 months after the entry of a final,  
6       nonappealable judgment in the action.

7           “(q) DEFENDANT’S RIGHT TO SPECIAL VERDICTS  
8       ESTABLISHING SCIENTER.—In any private action under  
9       this title in which the plaintiff may recover money dam-  
10      ages, the court shall, when requested by a defendant, sub-  
11      mit to the jury a written interrogatory on the issue of each  
12      such defendant’s state of mind at the time the alleged vio-  
13      lation occurred.”.

14          (b) PROHIBITION OF REFERRAL FEES THAT FO-  
15      MENT LITIGATION.—Section 15(c) of the Securities Ex-  
16      change Act of 1934 (15 U.S.C. 78o(c)) is amended by add-  
17      ing at the end the following new paragraph:

18           “(7) RECEIPT OF REFERRAL FEES.—No broker  
19      or dealer, or person associated with a broker or deal-  
20      er, may solicit or accept remuneration for assisting  
21      an attorney in obtaining the representation of any  
22      customer in any private action under this title.”.

1 **SEC. 204. PREVENTION OF “FISHING EXPEDITION” LAW-**  
2 **SUITS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
4 et seq.) is amended by inserting after section 10 the fol-  
5 lowing new section:

6 **“SEC. 10A. REQUIREMENTS FOR SECURITIES FRAUD AC-**  
7 **TIONS.**

8 “(a) SCIENTER.—In any action under section 10(b),  
9 a defendant may be held liable for money damages only  
10 on proof—

11 “(1) that the defendant made an untrue state-  
12 ment of a material fact, or omitted to state a mate-  
13 rial fact necessary in order to make the statements  
14 made, in light of the circumstances in which they  
15 were made, not misleading; and

16 “(2) that the defendant knew the statement  
17 was misleading at the time it was made, or inten-  
18 tionally omitted to state a fact knowing that such  
19 omission would render misleading the statements  
20 made at the time they were made.

21 “(b) REQUIREMENT FOR EXPLICIT PLEADING AND  
22 PROOF OF SCIENTER.—In any action under section 10(b)  
23 in which it is alleged that the defendant—

24 “(1) made an untrue statement of a material  
25 fact; or

1           “(2) omitted to state a material fact necessary  
2           in order to make the statements made, in the light  
3           of the circumstances in which they were made, not  
4           misleading;

5   the complaint shall allege specific facts demonstrating the  
6   state of mind of each defendant at the time the alleged  
7   violation occurred. The complaint shall also specify each  
8   statement or omission alleged to have been misleading,  
9   and the reasons the statement or omission is misleading.  
10 If an allegation regarding the statement or omission is  
11 made on information and belief, the complaint shall set  
12 forth with specificity all information on which that belief  
13 is formed. Failure to comply fully with this requirement  
14 shall result in dismissal of the complaint for failure to  
15 state a cause of action.

16       “(c) RELIANCE.—In any action arising under section  
17 10(b) based upon a material misstatement or omission  
18 concerning a security, the plaintiff must prove that he or  
19 she had actual knowledge of and actually relied on such  
20 statement in connection with the purchase or sale of a se-  
21 curity and that the misstatement or omission proximately  
22 caused (through both transaction causation and loss cau-  
23 sation) any loss incurred by the plaintiff.

24       “(d) LIMITS ON WINDFALL DAMAGES.—In any ac-  
25 tion arising under section 10(b) based on a material



1 misstatement or omission concerning a security, an award  
2 of damages that exceeds the price paid for a security pur-  
3 chased in reliance upon a material misstatement or omis-  
4 sion shall not exceed the lesser of—

5           “(1) the difference between the price paid for  
6 the security which was purchased in reliance upon a  
7 material misstatement or omission, and the market  
8 value of the security immediately after dissemination  
9 to the market of information which corrects the  
10 misstatement or omission; and

11           “(2) the difference between the price paid for  
12 the security which was purchased in reliance upon a  
13 material misstatement or omission, and the price at  
14 which the relying party sold the security after dis-  
15 semination of information correcting the  
16 misstatement or omission.”.

17 **SEC. 205. ESTABLISHMENT OF “SAFE HARBOR” FOR PRE-**  
18 **SCRIPTIVE STATEMENTS.**

19           (a) CONSIDERATION OF REGULATORY OR LEGISLA-  
20 TIVE CHANGES.—In consultation with investors and issu-  
21 ers of securities, the Securities and Exchange Commission  
22 shall adopt or amend its rules and regulations to create—  
23           (1) clear and objective criteria that the Com-  
24 mission finds sufficient for the protection of inves-  
25 tors, compliance with which shall be readily ascer-

1       tainable by issuers prior to issuance of securities, by  
2       which forward-looking statements concerning the fu-  
3       ture economic performance of an issuer of securities  
4       registered under section 12 of the Securities Ex-  
5       change Act of 1934 will be deemed not to be in vio-  
6       lation of section 10(b) of that Act; and

7               (2) procedures by which courts shall timely dis-  
8       miss claims against such issuers of securities based  
9       on such forward-looking statements if such state-  
10      ments are in accordance with any criteria under  
11      paragraph (1).

12      (b) COMMISSION CONSIDERATIONS.—In developing  
13      rules in accordance with subsection (a), the Commission  
14      shall also—

15              (1) prescribe appropriate limits to liability for  
16      conscientiously prepared forward-looking statements  
17      that do not fall within any regulatory safe harbor;

18              (2) set forth procedures for making a summary  
19      determination of the applicability of any Commission  
20      rule for forward-looking statements early in a judi-  
21      cial proceeding to limit protracted litigation and ex-  
22      pansive discovery;

23              (3) ensure that its rules incorporate and reflect  
24      the scienter requirements applicable to actions under

1 section 10(b) of the Securities Exchange Act of  
2 1934; and

3 (4) ensure that its rules provide clear guidance  
4 to investors, issuers of securities, and the judiciary.

5 (c) SECURITIES ACT AMENDMENT.—The Securities  
6 Exchange Act of 1934 (15 U.S.C. 78a et seq.), is amended  
7 by adding at the end the following new section:

8 **“SEC. 38. APPLICATION OF SAFE HARBOR FOR FORWARD-**  
9 **LOOKING STATEMENTS.**

10 “(a) IN GENERAL.—In any private action under this  
11 title that alleges that a forward-looking statement con-  
12 cerning the future economic performance of an issuer reg-  
13 istered under section 12 was materially false or mislead-  
14 ing, if a party making a motion in accordance with sub-  
15 section (b) requests a stay of discovery concerning the  
16 claims or defenses of that party, the court shall grant such  
17 a stay until it has ruled on any such motion.

18 “(b) SUMMARY JUDGMENT MOTIONS.—Subsection  
19 (a) shall apply to any motion for summary judgment made  
20 by a party asserting that the forward-looking statement  
21 was within the coverage of any safe harbor rule which the  
22 Commission may have adopted concerning such predictive  
23 statements, if such motion is made not less than 60 days  
24 after the commencement of discovery in the action.

1       “(c) DILATORY CONDUCT; DUPLICATIVE DISCOV-  
 2 ERY.—Notwithstanding subsection (a) or (b), the time  
 3 permitted for discovery under subsection (b) may be ex-  
 4 tended, or a stay of the proceedings may be denied, if the  
 5 court finds that—

6               “(1) the party making a motion described in  
 7 subsection (b) engaged in dilatory or obstructive  
 8 conduct in taking or opposing any discovery; or

9               “(2) a stay of discovery pending a ruling on a  
 10 motion under subsection (b) would be substantially  
 11 unfair to such party or to other parties to the ac-  
 12 tion.”.

13 **SEC. 206. ALTERNATIVE DISPUTE RESOLUTION PROCE-**  
 14 **DURE.**

15       The Securities Exchange Act of 1934 (15 U.S.C. 78a  
 16 et seq.) is amended by adding at the end the following  
 17 new section:

18 **“SEC. 39. ALTERNATIVE DISPUTE RESOLUTION PROCE-**  
 19 **DURE.**

20       “(a) IN GENERAL.—

21               “(1) OFFER TO PROCEED.—Except as provided  
 22 in paragraph (2), in any private action arising under  
 23 this title, any party may, before the expiration of the  
 24 period permitted for answering the complaint, de-  
 25 liver to all other parties an offer to proceed pursuant

1 to any voluntary, nonbinding alternative dispute res-  
2 olution procedure established or recognized under  
3 the rules of the court in which the action is main-  
4 tained.

5 “(2) PLAINTIFF CLASS ACTIONS.—In any pri-  
6 vate action under this title which is brought as a  
7 plaintiff class action, an offer under paragraph (1)  
8 shall be made not later than 30 days after a guard-  
9 ian ad litem or plaintiff steering committee is ap-  
10 pointed by the court in accordance with section 38.

11 “(3) RESPONSE.—The recipient of an offer  
12 under paragraph (1) or (2) shall file a written notice  
13 of acceptance or rejection of the offer with the court  
14 not later than 10 days after receipt of the offer. The  
15 court may, upon motion by any party made prior to  
16 the expiration of such period, extend the period for  
17 not more than 90 additional days, during which time  
18 discovery may be permitted by the court.

19 “(4) SELECTION OF TYPE OF ALTERNATIVE  
20 DISPUTE RESOLUTION.—For purposes of paragraphs  
21 (1) and (2), if the rules of the court establish or rec-  
22 ognize more than 1 type of alternative dispute reso-  
23 lution, the parties may stipulate as to the type of al-  
24 ternative dispute resolution to be applied. If the par-  
25 ties are unable to so stipulate, the court shall issue

1 an order not later than 20 days after the date on  
2 which the parties agree to the use of alternative dis-  
3 pute resolution, specifying the type of alternative  
4 dispute resolution to be applied.

5 “(5) SANCTIONS FOR DILATORY OR OBSTRUC-  
6 TIVE CONDUCT.—If the court finds that a party has  
7 engaged in dilatory or obstructive conduct in taking  
8 or opposing any discovery allowed during the re-  
9 sponse period described in paragraph (3), the court  
10 may—

11 “(A) extend the period to permit further  
12 discovery from that party for a suitable period;  
13 and

14 “(B) deny that party the opportunity to  
15 conduct further discovery prior to the expiration  
16 of the period.”.

17 **SEC. 207. RULE OF CONSTRUCTION.**

18 Nothing in the amendments made by this Act shall  
19 be deemed to create or ratify any implied private right  
20 of action, or to prevent the Commission by rule from re-  
21 stricting or otherwise regulating private actions under the  
22 Securities Exchange Act of 1934.

1 **SEC. 208. EFFECTIVE DATE.**

2       This Act and the amendments made by this Act are  
3 effective on the date of enactment of this Act and shall  
4 apply to cases commenced after such date of enactment.



HR 10 SC——2

HR 10 SC——3

HR 10 SC——4